(1) S.B.CIVIL MISC. APPEAL No.1468/2006
(The Oriental Insurance Company Ltd. Vs. Birbal Ram & ors.)

(2) S.B.CIVIL MISC. APPEAL No.1467/2006
(The Oriental Insurance Company Ltd. Durga Ram & others)

DATED : 04.10.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Anil Bachhawat for the appellant

Having heard learned counsel for the appellant-insurer and having examined the impugned common award dated 24.02.2006 made by Motor Accidents Claims Tribunal, Phalodi, this Court is satisfied that both these appeals deserve to be dismissed; and being related to the same accident and common award, are taken up for disposal by this common order.

By way of these appeals the insurer of the offending vehicle seeks to question quantum of compensation of Rs.2,25,000/- awarded by the Tribunal to the respective claimants in each of Claim Case Nos.38/2005 and 52/2005.

On 07.06.2005 at about 5.00 p.m. on National Highway No.15 at Phalodi a truck bearing registration No.RJ 20G 4505 hit and crushed a pedestrian 11 years old girl Sumta and then crushed another pedestrian about 16 years old boy Hanuman before coming to halt nearly 68 ft. ahead. Two claim applications were submitted before the Motor Accidents

Claims Tribunal, Phalodi in relation to the incident aforesaid. In Claim Case No.38/2005 parents and brothers-sisters of the deceased Hanuman claimed compensation with reference to Section 163A of the Motor Vehicles Act, 1988 in the sum of Rs.10,62,000/-. In other Claim Case No.52/2005 parents of Kumari Sumta claimed compensation in the sum of Rs.11,28,000/- but maintained their claim application under Section 166 of the Act.

It appears that the Tribunal proceeded to consolidate both the claim cases and framed the issues encompassing the questions involved in both cases thus:

> "(1) आया दिनांक 07.06.2005 को सांय करीब 5 बजे सरहद फलोदी कस्बा में राष्ट्रीय राजमार्ग संख्या-15 जैसलमेर से बीकानेर की ओर जाने वाली सड़क पर नागौर चौराहे के पास माँ भवानी होटल के सामने ट्रक संख्या -20-जी-4505 को चलाकर आवेदन संख्या-38/05 से सम्बन्धित मृतक हड़मान उर्फ हनुमान उम्र-18 वर्ष के टक्कर मारी जिसके फलस्वरूप उसकी मृत्यु हो गई ?
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> .....प्रार्थीगण
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> (2)आया दिनांक 07.06.2005 को सांय करीब 5 बजे सरहद फलोदी कस्बा में राष्ट्रीय राजमार्ग संख्या -15 जैसलमेर से बीकानेर की ओर जाने वाली सड़क पर नागौर चौराहे पास माँ भवानी होटल के सामने ट्रक संख्या-20-जी-4505 के चालक अप्रार्थी संख्या-1 ने तेजी व लापरवाही से चलाकर आवेदन संख्या -52/05 से सम्बन्धित मृतका सुमता उम्र-11 वर्ष के टक्कर मारी जिसके फलस्वरूप उसकी मृत्यु हुई ?
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> .....प्रार्थीगण
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> (3) आया मुताबिक आवेदन संख्या-38/05 एवं आवेदन संख्या-52/05 के प्रार्थीगण कितनी-कितनी प्रतिकर राशि प्राप्त करने के अधिकारी हैं?
>
> .....प्रार्थीगण

(4)आया वक्त घटना उक्त वाहन ट्रक आर जे-20-जी-4505 के चालक के पास वैध व प्रभावी ड्राईविंग लाईसेंस नहीं था ?

(5) आया वक्त घटना वाहन ट्रक सं. आर जे-20-जी-4505 के चालक व स्वामी द्वारा बीमा पॉलिसी की शर्तों व निबन्धनों का उल्लंघन कर चलाए जाने से बीमा कम्पनी का कोई उत्तरदायित्व नहीं है ?

(6) आया दुर्घटना के लिए दोनों प्रकरणों के मृतक हनुमान उर्फ हड़मान व सुमता स्वयं जिम्मेदार होने से आवेदन चलने योग्य नहीं है ?

(7) अनुतोष ?"

After taking evidence and hearing the parties, the Tribunal proceeded to decide issues Nos.1,2 and 6 together and noticed that so far case No.38/2005 was concerned, question of negligence of vehicle driver was not germane to decision of the said claim case as the claimants maintained their claim application under Section 163A of the Act but issue No.2 related to Claim Case No.52/2005 that was filed under Section 166 of the Act and therein the question of responsibility towards accident was required to be considered. The Tribunal, therefore, proceeded to consider the question of negligence and found that the offending vehicle proceeded to crush the two victims and then to hit another parked motorcycle before coming to halt nearly 68 ft. from the point of incident. The Tribunal found that the accident occurred exclusively for the fault of the truck driver and the deceased Hanuman and Kumari Sumta were not at all responsible

towards the accident. The questions involved in issues Nos.4 and 5 were decided against the insurer as driver was found holding a valid driving licence and the insurer failed to show any violation of policy conditions by the insured.

The Tribunal took up quantification of compensation in relation to the individual cases in issue No.3. The Tribunal found the age of victims at 16 years and 11 years respectively and then referred to the cited decisions and noted that in various cases, the Apex Court and so also this Court have taken notional income in respect of a non-earning person at Rs.15,000/-per annum and awarded compensation without deducting one-third on the personal expenditure of the deceased. The Tribunal, therefore, took notional income in relation to each of the victim at Rs.15,000/- per annum and by application of multiplier of 15 allowed compensation to the respective claimants in the sum of Rs.2,25,000/- and also allowed interest at the rate of 6% per annum from the date of filing of claim application.

The insurer of the offending vehicle having been granted permission under Section 170 of the Motor Vehicles Act to contest the claim on all the grounds seeks to question the quantum of compensation awarded by the Tribunal with the contentions that the deceased were unmarried persons and looking to the age of their parents, appropriate lower side

multiplier ought to have been applied and that the multiplicand adopted in respective cases by taking entire of notional income at Rs.15,000/- is also not correct. According to the insurer, the amount awarded in both the cases being excessive than a just compensation deserves interference.

A comprehension of the impugned award makes it clear that the Tribunal has awarded compensation in the sum of Rs.2,25,000/- to each set of claimants for the accidental death of grown up children in the age of 16 and 11 years respectively. The Tribunal has proceeded with reference to the Second Schedule to the Motor Vehicles Act and both the victims being non-earning persons, has taken their notional income at Rs.15,000/- per annum. The Tribunal has proceeded with reference to the specific decisions of the Hon'ble Supreme Court and so also of this Court relating to similar victims of younger age groups wherein no amount has been deducted from the notional income of Rs.15,000/- per annum towards personal expenses of the deceased and after application of multiplier of 15, compensation has been awarded in the sum of Rs.2,25,000/- in each case. In the case of Gulab Singh Vs. Shiv Prasad:2006(1) RDD 414 (Raj.) referred by the Tribunal, this Court has allowed compensation in the sum of Rs.2,25,000/- for accidental death of a 16 years old boy with reference to the decision of Hon'ble Supreme

Court in Manju Devi Vs. Musafir Paswan: 2005 (1) TAC (SC) 609 with the observations that,-

> "The Apex Court in Manju Devi vs. Musafir Paswan (Supra), wherein the deceased was a boy of 13 years, the Apex Court took his annual income at Rs.15,000/- being a non-earning member as per Second Schedule and therefrom no amount has been deducted for his personal expenses and after applying multiplier of 15, awarded compensation to a sum of Rs.2,25,000/- under the head of loss of economic dependency to the family."

With decisions cited before it dealing with similar fact situations concerning the age and status of the accident victims taking a particular view, it cannot be said that the Tribunal has proceeded arbitrarily in arriving at the figure of Rs.2,25,000/- to be awarded as just compensation in these two cases.

It is true that both the victims were unmarried persons and a factor of comparatively lessor contribution for the claimants could have been considered but the fact remains that notional income of Rs.15,000/- per annum has been adopted and compensation has been awarded on that basis by applying multiplier of 15 but no amount has been awarded towards non-pecuniary loss. In the context of the quantum of award and denial of separate amount towards non-pecuniary loss, this Court is of opinion that the ultimate amount awarded by the Tribunal cannot be said to be highly excessive.

Moreover, in a vehicular accident case, the Tribunal is required to award a just compensation and then interference in appeal is warranted only if the amount awarded by the Tribunal could be said to be either too low or highly excessive. Even if the awarded amount be considered to be a bit on the higher side, the same is not so excessive or exorbitant as to warrant interference in appeal at the instance of the insurer.

In the aforesaid view of the matter, no case for interference in these appeals is made out.

The appeals fail and are, therefore, dismissed.

(DINESH MAHESHWARI),J.

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